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**OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE**

**Attorney General Opinion No. 17-IB26**

**July 18, 2017**

**VIA U.S. MAIL & EMAIL**

Herman M. Holloway, Jr.  
Martin Luther King Center of Delaware  
435 South Heald Street  
Wilmington, DE 19801

**RE: March 1, 2017 Correspondence Regarding Wilmington Housing Authority**

Dear Mr. Holloway:

We write in response to your petition, received March 1, 2017, alleging that the Wilmington Housing Authority Board of Commissioners (“WHA”) violated the open meeting provisions of Delaware’s Freedom of Information Act, 29 *Del. C.* § 10001 *et seq.* (“FOIA”). Specifically, you allege that the WHA violated FOIA at its February 27, 2017 Board meeting by (1) posting notice of the meeting on February 22, 2017—five days before the meeting; (2) originally noticing an executive session to begin at 3:30 PM and the open public meeting to begin at 6:00 PM; and by (3) amending the agenda that was posted in the lobby of the building where the meeting occurred on the day of the meeting. The remainder of your allegations concern the interpretation of the WHA bylaws and the proper appointment of Commissioners and, as explained in our earlier correspondence, are allegations outside the scope of FOIA that will not be addressed in this opinion. For the reasons set forth below, it is our determination that the WHA did not violate FOIA at its February 27, 2017 meeting.

By letter dated March 17, 2017, the WHA responded to your petition, contending that notice of the February 27, 2017 meeting was posted on February 17, 2017 at 4:45 PM and originally included an “Executive Session” on the agenda at 3:30 PM, as you allege. WHA further contends that the agenda was amended and re-posted fifteen minutes later, at 5:00 PM on February 17, 2017, and the 3:30 “Executive Session” item was amended to read “Briefing: Commissioners/Senior Staff.” WHA provided supplemental documentation, including the original agenda, the amended agenda, and the minutes of the February 27, 2017 meeting. In its March 17, 2017 correspondence, the WHA characterizes the 3:30 PM “Briefing” as a “meet and

greet” of the new, but not yet sworn-in, Board members during which time no public business was discussed.

### RELEVANT STATUTES

FOIA defines a “meeting” as “the formal or informal gathering of a quorum of the members of any public body for the purpose of discussing or taking action on public business either in person or by video-conferencing.”<sup>1</sup> FOIA requires all public bodies to “give public notice of their regular meetings and their intent to hold an executive session closed to the public, at least 7 days in advance thereof.”<sup>2</sup> Such notice “shall include, but not be limited to, conspicuous posting of said notice at the principal office of the public body holding the meeting, or if no such office exists, at the place where the meetings of the public body are regularly held, and making a reasonable number of such notices available.”<sup>3</sup> For any special or rescheduled meetings, which FOIA defines as “one to be held less than 7 days after the scheduling decision is made,” notice shall be provided “as soon as reasonably possible, but in any event no later than 24 hours before such meeting.”<sup>4</sup> However, the public notice of any such meeting must include an explanation as to why 7 days’ notice could not be given.<sup>5</sup> Similarly, “[w]hen the agenda is not available as of the time of the initial posting of the public notice it shall be added to the notice at least 6 hours in advance of said meeting, and the reasons for the delay in posting shall be briefly set forth in the agenda.”<sup>6</sup>

Public notice of meetings “shall include the agenda, if such has been determined at the time, and the dates, times and places of such meetings . . . .”<sup>7</sup> However, “the agenda shall be subject to change to include additional items including executive sessions or the deletion of items including executive sessions which arise at the time of the public body’s meeting.”<sup>8</sup> An agenda is defined as including a “general statement of the major issues expected to be discussed at a public meeting, as well as a statement of intent to hold an executive session and the specific grounds therefore.”<sup>9</sup>

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<sup>1</sup> 29 *Del. C.* § 10002(g).

<sup>2</sup> 29 *Del. C.* § 10004(e)(2).

<sup>3</sup> 29 *Del. C.* § 10004(e)(4).

<sup>4</sup> 29 *Del. C.* § 10004(e)(3).

<sup>5</sup> *Id.*

<sup>6</sup> 29 *Del. C.* § 10004(e)(5).

<sup>7</sup> 29 *Del. C.* § 10004(e)(2).

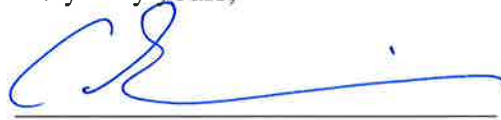
<sup>8</sup> *Id.*

<sup>9</sup> 29 *Del. C.* § 10002(a).

## DETERMINATION

Here, the WHA's supplemental documentation makes clear that it satisfied FOIA's requirement of "conspicuous posting" by posting timely notice of its meeting at 400 North Walnut Street in Wilmington, which is the principal office of the WHA, ten days prior to the February 27, 2017 meeting. The original meeting agenda indicated an "Executive Session" would be held at 3:30 PM, but that agenda was amended fifteen minutes later and reposted. In the amended agenda, the item "Executive Session" was replaced with "Briefing: Commissioners/Senior Staff." While this suggests that public business would be discussed—that is, the implicit purpose of a "briefing" suggests that new Commissioners would be informed of business pending before the WHA, in its March 17, 2017 correspondence, the WHA explains that the 3:30 PM "Briefing" was a "meet and greet" for the new Commissioners during which time no public business was discussed. Such a purely social gathering would not be considered a "public meeting" such that the requirements of FOIA would be implicated.<sup>10</sup> Certainly, WHA should have been more accurate in its descriptor of this agenda item. Nonetheless, we do not find that a FOIA violation occurred.

Very truly yours,



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Aaron R. Goldstein  
State Solicitor

cc: LaKresha Roberts, Chief Deputy Attorney General (via email)  
Michelle E. Whalen, Deputy Attorney General (via email)  
Michael P. Stafford, Esq. (via email)

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<sup>10</sup> See 29 Del. C. § 10002(g) (defining "meeting" as "the formal or informal gathering of a quorum of the members of any public body *for the purpose of discussing or taking action on public business ....*") (emphasis added).